

UNITED STATES DISTRICT COURT
THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

NO. 1456

THIS DOCUMENT RELATES TO:

Civil Action No. 01-CV-12257-PBS

State of Nevada v. American Home Prods. Corp., et al.
D. Nev. Cause No. CV-N-02-0202-ECR

Judge Patti B. Saris

**DEFENDANT PFIZER INC'S RESPONSE TO THE STATE OF
NEVADA'S ADDITIONAL FACTS RELIED UPON BY NEVADA
IN RESPONSE TO DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, defendant Pfizer Inc. ("Pfizer") submits this response to the State of Nevada's Additional Facts Relied Upon by Nevada in Response to Defendants' Motion for Summary Judgment ("State's Additional Facts") (Docket No. 3909). The principal allegations of the State and material cited in support thereof are found at the State's Additional Facts ¶¶ 137 to 144. The allegations in these paragraphs of the State's Additional Facts correspond to facts already alleged and materials already submitted by the State of Montana in its L.R. 56.1 Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment Against Certain Defendants ("Montana 56.1 Stmt.") (Docket No. 3737), which was filed in the Montana action.

Pfizer hereby incorporates by reference Defendants' Joint 56.1 Reply to Additional Facts Relied Upon by Nevada in Response to Defendants' Motion for Summary Judgment. In addition, Pfizer makes the following Response:

Paragraphs 141, 142: To the extent those paragraphs cite to documents from Pharmacia Corporation (see State's Additional Facts ¶¶ 141, 142), they are irrelevant to Nevada's claims because Pharmacia is not a defendant in this action.¹ The only paragraph that references Pfizer cites to Pfizer's Answer in the Montana Action. (*Id.* ¶ 141.) Not only is Pfizer's answer to *Montana's* complaint irrelevant to *Nevada's* claims, it also does nothing to support Nevada's claims.

Paragraph 144: This paragraph incorporates certain paragraphs of the declarations of Colleen Lawrence and Charles Duarte that reference alleged "spreads" of "Pfizer" drugs. (Lawrence Decl. ¶ 38; Duarte Decl. ¶ 44 & Exh. H.) First, of the 54 NDC codes listed in Exhibit H, only 2—those for Zithromax—are Pfizer's. The remaining 52 NDC codes are for Pharmacia drugs, and Pharmacia is not a defendant in this lawsuit. Second, as to the remaining two NDC codes, the purported "spreads" range from 27.0% to 36.9%. (See Duarte Exh. H.) Even if one were to assume these "spreads" are accurate, after accounting for the 25% markup by the third-party publishers, these "spreads" appear to reflect discounts of less than 2% to 12% off of Pfizer's list price.

Respectfully submitted,

Dated: April 5, 2007

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¹ Pharmacia Corporation is named as a defendant in *Nevada I* only.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2007, a true and accurate copy of Defendant Pfizer Inc's Response to the State of Nevada's Additional Facts Relied Upon in Response to Defendants' Motion for Partial Summary Judgment was served upon all counsel of record via the Lexis-Nexis Filing System:

DATED: April 5, 2007.

/s/ Mark D. Smith